

## DECLARATION OF WARREN B. COLE

1. I am an adult citizen of the U.S. Virgin Islands and make this declaration upon personal knowledge, except to the extent that averments made herein are expressly stated to have been made upon information and belief.
2. At all relevant times I was counsel for GEC, LLC ("GEC") in connection with the disputes between GEC and Alpha Technologies Services, Inc. ("Alpha") and Argonaut Insurance Company ("Argonaut").
3. Argonaut Insurance Company ("Argonaut") issued a Performance Bond under AIA Form Document A312 - 2010 as surety for the Alpha's performance under the Subcontract.
4. Alpha commenced suit against GEC for non-payment of amounts it claims under its Subcontract. GEC has counterclaimed against Alpha, *inter alia*, for breach of the Subcontract.
5. On or about July 23, 2018, GEC gave notice to Alpha of termination of the Subcontract for cause, effective July 30, 2018. In all direct communications with Argonaut I addressed my communications to Mr. Robert Lavitt, Vice President and Director of Surety Claims. Upon information and belief, Mr. Lavitt is a licensed attorney.
6. On or about August 21, 2018, GEC submitted a demand for completion of the Subcontract, or other performance by Argonaut, pursuant to the terms of the Performance Bond.
7. On or about September 18, 2018, I was informed via email by Mr. Lavitt that an "expert" had been retained by Argonaut to review GEC's bond claim and that Argonaut wished to arrange an inspection of the Microgrid by its expert.<sup>1</sup>
8. On or about October 1, 2018, Mr. Lavitt asked for GEC's availability for the inspection during the week of October 15, 2018.<sup>2</sup> I replied that GEC could accommodate the inspection that week.<sup>3</sup>
9. My opposing counsel representing Alpha in Civil No. 1:18-cv-00058 is Mr. Frank Bigelis. After my communications with Mr. Lavitt regarding the inspection, Mr. Bigelis informed me that he would coordinate the Argonaut inspection.

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<sup>1</sup> Exhibit A hereto, email Lavitt to Cole 9/18/18 at 11:57 a.m.

<sup>2</sup> Id., email Lavitt to Cole 10/01/18 at 1:33 p.m.

<sup>3</sup> Id., email Cole to Lavitt 10/02/18 at 5:50 p.m.

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Thereafter all direct communications regarding the inspection were exchanged with Mr. Bigelis, with email copies to Mr. Lavitt.

10. The site inspection by Argonaut's expert was arranged between me and Mr. Bigelis, confirmed by email, with copies to Mr. Robert Lavitt, Vice President of Argo Surety and Director of Surety Claims.
11. Scheduling and confirmation of the inspection was the subject of a specific email string between GEC's counsel and Mr. Bigelis between October 4, 2018, and October 18, 2018, using Mr. Bigelis' subject title of "Surety's engineer's site visit."<sup>4</sup>
12. As agreed via email, the inspection was scheduled for Tuesday and Wednesday, October 23 and 24, 2018. The attendees were to be Mr. Bigelis, Mr. Danny Alldredge (Alpha's site project manager), and Mr. Lane Young (Argonaut's retained inspecting expert).<sup>5</sup>
13. At the time of Argonaut's inspection, the project was on VIWAPA power, Alpha's last attempt to power the Microgrid having last failed on August 24, 2018.
14. Upon information and belief, in order to operate the Microgrid, one must first perform a "blackstart" procedure of the Microgrid by starting the diesel generators to provide power to the control systems and then to energize the Microgrid, including the parasitic load (i.e., the electrical systems, control systems, machinery and air conditioning of the Microgrid system itself) and, if necessary to begin charging the storage batteries.
15. Upon information and belief, once the Microgrid is operating, the residential load can be switched from VIWAPA to the Microgrid by the use of a manual transfer switch which is locked with a key which is in the exclusive control of GEC.
16. Prior to attempting to switch the residential load from VIWAPA to the Microgrid, it would be necessary to make prior arrangements with the project owner/manager to inform tenants of a possible power interruption and to prepare for possible power outages should the Microgrid fail. This would require GEC personnel with control of the transfer switch to remain on standby. In other

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<sup>4</sup> Exhibit B hereto.

<sup>5</sup> Id., email Bigelis to Cole 10/23/19 at 9:00 a.m.



words, the residential load could not be switched to the Microgrid without action to be taken by both GEC and the project owner.

17. On October 18, 2018, I asked Mr. Bigelis to confirm the date, time, and attendees of Argonaut's inspection. In the same email, knowing that connection of the Microgrid to the residential load would require participation by both GEC and the project owner, I specifically asked Mr. Bigelis if Alpha/Argonaut was requesting any action to be taken by GEC or the project owner other than merely providing physical access to the Microgrid system. In addition, I asked, in the event that any action was being requested of GEC or the owner, that a description and protocol be provided to us. This email was copied to Mr. Robert Lavitt.<sup>6</sup>
18. By return email, Mr. Bigelis explicitly stated that the inspection required access only.<sup>7</sup> Mr. Bigelis provided no inspection description or protocol to GEC or the owner providing for them to coordinate or in any way assist in the inspection (e.g., switch the community load to the Microgrid once Alpha/Argonaut had completed a black-start procedure), other than merely arranging for site access. Thus, Mr. Bigelis, with the full knowledge of Mr. Lavitt and Argonaut, declined any assistance from GEC or the owner in facilitating Argonaut's inspection other than merely allowing physical access. This precluded connecting the Microgrid to the residential load during Argonaut's inspection because: a) Alpha/Argonaut did not request it; and b) necessary prior arrangements with the owner were not made.
19. As per the arrangements between myself and Mr. Bigelis (the latter apparently acting on behalf of both Alpha and Argonaut), Argonaut's inspection began at 9:00 a.m. on October 22, 2018, at the Anna's Hope site, with the following initially in attendance:
  - a. GEC counsel, Warren B. Cole;
  - b. GEC project manager, Jon Adams;
  - c. Alpha counsel, Frank Bigelis (also apparently acting on behalf of Argonaut);
  - d. Alpha project manager, Danny Alldredge; and
  - e. Mr. Lane Young, the expert retained by Argonaut as designated in the email from Mr. Bigelis.

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<sup>6</sup> Id., email Cole to Bigelis 10/18/18 at 7:41 a.m.

<sup>7</sup> Id., email Bigelis to Cole 10/18/18 at 8:09 a.m.

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20. I introduced Mr. Adams to the Alpha/ Argonaut representatives, informed them that Mr. Adams would be on site during the inspection, that they had free access to all parts of the Microgrid system including the rooftop solar panels, and that during the inspection the residential load would remain connected to the VIWAPA power grid via the manual transfer switch.

21. I then left the project site.

22. At no time did Mssrs. Lavitt, Bigelis, Alldredge, or Young inform me that connection of the Microgrid to the community load was desired or necessary for Argonaut's inspection. At no time did Mssrs. Lavitt, Bigelis, Alldredge, or Young object to my statement at the inception of the inspection that the community load would remain connected to the VIWAPA electrical grid during the inspection.

I declare under the penalty of perjury that the foregoing is true and correct.  
Executed on March 26, 2019 on St. Croix, Virgin Islands.



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Warren B. Cole